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The Commonwealth of Massachusetts

Department of Public Safety

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Thomas G. Gatzunis, P.E.
Commissioner

Thomas P. Hopkins
Director

FINAL DECISION OF THE ARCHITECTURAL ACCESS BOARD

Date: **June 4, 2012**

Name of Property: **Wayne Apartments**

Property Address: **Multiple Locations, Dorchester, Roxbury, Mattapan, MA**

Docket Number: **V12-102**

Date of Hearing: **May 21, 2012**

Enclosed please find a copy of the decision relative to the above mentioned matter.

Sincerely:

ARCHITECTURAL ACCESS BOARD

By:

Kate Sutton, Program Coordinator/Clerk for Proceedings

cc: Local Building Inspector
Local Commission on Disabilities
Local Independent Living Center

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

ARCHITECTURAL ACCESS BOARD
Docket No. V12-102

In re)
)
Wayne Apartments)
Multiple Locations)
Dorchester, Mattapan, Roxbury, MA)

)

BOARD DECISION

Introduction

This matter originally came before the Architectural Access Board (“Board”) as a variance request received by the Board on April 11, 2012, pursuant to 521 CMR 4.00, and submitted by Anthony Vivirito of The Architectural Team, Inc., on behalf of Wayne Apartments Project LP (“Petitioner”). The Petitioner requested that the Board grant a variance to 521 CMR 9.4, regarding the lack of Group 2 Units; 521 CMR 9.4.2, regarding the lack of distribution of accessible units ; and 521 CMR 10.1, regarding the lack of accessible common areas.

In accordance with M.G.L. c. 30A, §§ 10 and 11; 801 CMR 1.02 *et. seq.*; and 521 CMR 4.00, the Board convened a hearing on May 21, 2012 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Scott Maenpaa, The Architectural Team; Daniel Cruz, Jr., Cruz Development Corporation; Anthony Viviritto, The Architectural Team; John Cruz III, Cruz Development Corporation; Rodney DeLeaver, Cruz Management Corporation, all appeared on behalf of the Petitioner. All were sworn in by the Chairman.

Applicable Laws

The Board’s jurisdiction is established pursuant to 521 CMR 3.3.2 which requires that, “[i]f the work performed, including the exempted work, amounts to 30% or more of the *full and fair cash value* (see **521 CMR 5.00**) of the *building* the entire *building* is required to comply with 521 CMR.”

Pursuant to 521 CMR 9.4, “[i]n *multiple dwellings* that are for rent, hire, or lease (but not for sale) and contain 20 or more units, at least 5% of the *dwelling units* must be *Group 2A* units. *Group 2A* units must comply with **521 CMR 9.5, Dwelling Unit Interiors**; and **521 CMR 44.00: GROUP 2 BATHROOMS**; and **521 CMR 45.00: GROUP 2 KITCHENS**; and **521 CMR 47.00: GROUP 2 BEDROOMS**.”

Section 9.4.2 of 521 CMR requires that, “...[g]roup 2A *dwelling units* shall be proportionally distributed across the total number of units according to number of bedrooms, size, quality, price and location.”

521 CMR 10.1 states that, “[t]he *public use* and *common use* spaces of *multiple dwellings* in existing *buildings* consisting of 12 or more units in a *building*, shall be *accessible* and shall comply with **521 CMR**. The public use and *common use* spaces of *multiple dwellings* in new *construction* consisting of three or more units shall comply with **521 CMR**. *Public* and *common use* spaces are those spaces inside or outside a *building* that are used by residents and/or visitors. *Public use* and *common use* spaces shall include but not be limited to community facilities, meeting rooms, restaurants, recreation spaces, health facilities, pools, public toilet rooms, laundry areas, trash areas, storage areas, mailboxes, walks, sidewalks, parking lots and garages, entrances, elevators, lobbies and foyers, as well as corridors and stairways leading to *dwelling units*.”

Exhibits

- Exhibit 1: Board Packet, AAB1-74, including all correspondence and plans submitted by the Petitioner.
- Exhibit 2: May 9, 2012 letter from Boston Center for Independent Living (BCIL) and Community Access Project (CAPS)
- Exhibit 3: The Architectural Team plans and drawings of the project properties, dated May 21, 2012, submitted by the Petitioners.

Facts

The Variance Hearing was held on May 21, 2012 and based on the credited testimony of the witness, and the documents submitted, the Board finds the following facts:

- 1) The project is the renovation of 55 buildings at 26 locations in the Dorchester, Mattapan & Roxbury neighborhoods of Boston, which have a total of 349 housing units. Currently there are 18 accessible units at five (5) of the 26 sites, with the Petitioners proposing to maintain the number of accessible units provided within this complex. The project will be broken down into five (5) different phases of work with the first two (2) phases were funded by the Department of Housing and Community Development (DHCD). Phase 1 will consist of renovating the complex buildings in Mattapan. Phase 2 will consist of renovating the complex buildings in Dorchester. Phase 3 will consist of renovating the complex buildings in Dorchester and Mattapan. Phase 4 will consist of renovating the complex buildings in Dorchester, Mattapan and Roxbury. And Phase 5 will consist of renovating the complex buildings in Dorchester and Roxbury. Vivirito stated that there are a total of four (4) 1-bedroom and 14 2-bedroom accessible units, with currently no studio, 3, 4, or 5-bedroom accessible units, and none proposed for the current project. Vivirito stated that there are seven (7) studio units, 107 1-bedroom units (4 being accessible), 191 2-bedroom units (14 being accessible), 30 3-bedroom units, 10 4-bedroom units and 4 5-bedroom units throughout the complex. He noted that there are no accessible units proposed to be updated in Phase 1 of the work, proposed at 1439-1443 Blue Hill Avenue and 1471-1451 Blue Hill Avenue. Phase 2 of the project will deal with the Franklin Hill Avenue sites, with four (4) accessible 2-bedroom units proposed at 30-38 Franklin Hill Avenue, five (5) accessible 2-bedroom units proposed at 40-50 Franklin Hill Avenue, and five (5) accessible 2-bedroom units at 52-58 Franklin Hill Avenue. Vivirito stated that there is no off-street parking provided other than the accessible parking spaces provided for the accessible units at Franklin Hill units, with the same number of accessible parking spaces provided as the number of units provided for the building. He added that there will be no accessible units in Phase 3. There will be two (2) accessible units in Phase 4 and Phase 5, with two (2) accessible 1-bedroom units at 57 Bicknell Street (Phase 4) and two (2) accessible 1-bedroom units at 39 Schuyler Street (Phase 5). Vivirito stated that many of the larger 3 and 4 bedroom units are also located at the upper floors of the building, making compliance at these units that much more infeasible, based on the excessive cost and lack of feasibility to create access not only into the building, but also up to the

units. (Exhibit 1 and 3 and Testimony of Vivirito).

- 2) Vivirito stated that they have only recently pulled permits for Phase 1 of the project, and that the Petitioners were hoping to begin Phase 2 in October of 2012. John Cruz noted that the petitioners have received a commitment for bond funding for Phase 3, but have not yet determined what tax credits will be applied to that phase of the project. Vivirito noted that the overall construction schedule was dependent on the DHCD funding made available, and when said funding was available. John Cruz stated that they hoped to have work starting every 6 months, with around 70 units completed in that time frame. Daniel Cruz noted that Phase 1 of construction was scheduled to take one (1) year, and be done in two (2) phases since the buildings are currently occupied and the work will require that the families within the units be relocated during construction. He added that they were allotting one (1) month to relocate the families and five (5) months to complete the work in each building; with always half of the families within the building relocated off site. Daniel Cruz noted that Phase 1 had to be under construction prior to July 1, 2012, with Phase 2 proposed to be completed within the 2012 calendar year. He added that they are hoping to have the work done within the next five (5) years. (Exhibit 1 and Testimony of Vivirito, and John and Daniel Cruz).
- 3) Vivirito stated that the Petitioners were seeking variances for 521 CMR 9.4, regarding the lack of Group 2 units, specifically in Phase 1 of construction, based on the site and feasibility constraints. He noted that since this is a multiphase project, with the 5% ratio applied to entire portfolio, the number of accessible units provided did meet the overall 5% requirement of 17 Group 2 units. Vivirito noted that the variance was being requested for the first phase of the the project, which will not include any Group 2 units. He added that there are only two (2) properties with 20 or more units, and that if they applied the 5% ratio to each building, they would be required to provide less accessible units throughout the complex. Vivirito stated that all of the buildings containing accessible units are located in locations near a form of public transportation as well, i.e. an MBTA bus stop. He noted that the lack of creating access into the inaccessible buildings was also the reason that a variance was being sought for the lack of compliance with 521 CMR 10.1 at these buildings. (Testimony of Vivirito).
- 4) Vivirito testified that, as an example, 1439 Blue Hill Avenue was located directly at the sidewalk, and up to the entrance door of the building would be infeasible based on the fact that the beginning of the ramp would be locked between the existing building and the adjacent building. He went on to state that the installation of a lift to access the first floor of the building, from the entrance lobby, would encroach on the existing units, reducing the size of the units more than was feasible for the project. Vivirito stated that the change in level at this building was five (5) feet overall, from the sidewalk to the first floor, and that the lift would cost approximately \$40,000.00 and the ramp would cost \$20-25,000.00. Vivirito stated that the same issues for making the access into the first floor infeasible and an excessive cost without benefit to persons with disabilities were also present at the 1447 Blue Hill Avenue building. Maenpaa added that the installation of a lift within the buildings would also require that footings be poured to support the lift, at an additional cost and added taking of space. (Exhibit 1 and 3 and Testimony of Vivirito and Maenpaa).
- 5) Daniel Cruz stated that there are 11 other complexes that Cruz Development Corporation owns throughout the City of Boston. He stated that they have found that the requests for accessible units are usually for 1-3-bedroom units; adding that since there are only 1 and 2-bedroom units available within this complex, they can try to accommodate potential tenants within the portfolio of units available, or the tenants can be put on a wait list for one of the 3-bedroom units within the portfolio, or referred to Mass Housing for assistance with finding a unit that would be suit the tenants needs. Cruz added that since all of the units are affordable, there is no difference in pricing depending on unit size, since all of the units are based on 30% of the tenant's income. John Cruz noted that within their portfolio they also have townhouse structures with elevators in them to create access to the second level of the units. Daniel Cruz noted that due to the lack of interest in the existing accessible units, there are currently some units that are occupied by families that do not need the accommodations of an accessible unit. He noted that they could not leave the units vacant for more than 3-4 months, which is often how long they will wait to try to find a family in need of an accessible unit. Cruz further added that because these units are

located in the inner cities, some people are not as comfortable with being in these neighborhoods; and that they find that even though there are other parts of the city where people are waiting for accessible units, they may not want these units in these neighborhoods. He also added that they are currently in the process of confirming the 6-8 families that are currently on the list that are waiting for accessible units, since they would prefer not to put families in the accessible units that don't require the accessible features, but will have to fill the units if the families on the current waiting list have found housing in other locations. (Testimony of Daniel and John Cruz).

Analysis

The Board's jurisdiction is established pursuant to 521 CMR 3.3.2 which requires that, "[i]f the work performed, including the exempted work, amounts to 30% or more of the *full and fair cash value* (see **521 CMR 5.00**) of the *building* the entire *building* is required to comply with 521 CMR." Since the Petitioners are spending \$33,536,780.00, which is over 30% of the assessed value of the building in question (\$18,761,777.00; 30% is \$5,628,533.00), the entire complex is required to be brought into compliance with all applicable sections of 521 CMR.

The project is the renovation of 55 buildings at 26 locations in the Dorchester, Mattapan & Roxbury neighborhoods of Boston, which have a total of 349 housing units. Currently there are 18 accessible units at five (5) of the 26 sites, with the Petitioners proposing to maintain the number of accessible units provided within this complex. The project will be broken down into five (5) different phases of work with the first two (2) phases were funded by the Department of Housing and Community Development (DHCD). Phase 1 will consist of renovating the complex buildings in Mattapan. Phase 2 will consist of renovating the complex buildings in Dorchester. Phase 3 will consist of renovating the complex buildings in Dorchester and Mattapan. Phase 4 will consist of renovating the complex buildings in Dorchester, Mattapan and Roxbury. And Phase 5 will consist of renovating the complex buildings in Dorchester and Roxbury. Vivirito stated that there are a total of four (4) 1-bedroom and 14 2-bedroom accessible units, with currently no studio, 3, 4, or 5-bedroom accessible units, and none proposed for the current project. Vivirito stated that there are seven (7) studio units, 107 1-bedroom units (4 being accessible), 191 2-bedroom units (14 being accessible), 30 3-bedroom units, 10 4-bedroom units and 4 5-bedroom units throughout the complex. He noted that there are no accessible units proposed to be updated in Phase 1 of the work, proposed at 1439-1443 Blue Hill Avenue and 1471-1451 Blue Hill Avenue. Phase 2 of the project will deal with the Franklin Hill Avenue sites, with four (4) accessible 2-bedroom units proposed at 30-38 Franklin Hill Avenue, five (5) accessible 2-bedroom units proposed at 40-50 Franklin Hill Avenue, and five (5) accessible 2-bedroom units at 52-58 Franklin Hill Avenue. Vivirito stated that there is no off-street parking provided other than the accessible parking spaces provided for the accessible units at Franklin Hill units, with the same number of accessible parking spaces provided as the number of units provided for the building. He added that there will be no accessible units in Phase 3. There will be two (2) accessible units in Phase 4 and Phase 5, with two (2) accessible 1-bedroom units at 57 Bicknell Street (Phase 4) and two (2) accessible 1-bedroom units at 39 Schuyler Street (Phase 5). Vivirito stated that many of the larger 3 and 4 bedroom units are also located at the upper floors of the building, making compliance at these units that much more infeasible, based on the excessive cost and lack of feasibility to create access not only into the building, but also up to the units.

Vivirito stated that they have only recently pulled permits for Phase 1 of the project, and that the Petitioners were hoping to begin Phase 2 in October of 2012. John Cruz noted that the petitioners have received a commitment for bond funding for Phase 3, but have not yet determined what tax credits will be applied to that phase of the project. Vivirito noted that the overall construction schedule was dependent on the DHCD funding made available, and when said funding was available. John Cruz stated that they hoped to have work starting every 6 months, with around 70 units completed in that time frame. Daniel Cruz noted that Phase 1 of construction was scheduled to take one (1) year, and be done in two (2) phases since the buildings are currently

occupied and the work will require that the families within the units be relocated during construction. He added that they were allotting one (1) month to relocate the families and five (5) months to complete the work in each building; with always half of the families within the building relocated off site. Daniel Cruz noted that Phase 1 had to be under construction prior to July 1, 2012, with Phase 2 proposed to be completed within the 2012 calendar year. He added that they are hoping to have the work done within the next five (5) years.

Vivirito stated that the Petitioners were seeking variances for 521 CMR 9.4, regarding the lack of Group 2 units, specifically in Phase 1 of construction, based on the site and feasibility constraints. He noted that since this is a multiphase project, with the 5% ratio applied to entire portfolio, the number of accessible units provided did meet the overall 5% requirement of 17 Group 2 units. Vivirito noted that the variance was being requested for the first phase of the the project, which will not include any Group 2 units. He added that there are only two (2) properties with 20 or more units, and that if they applied the 5% ratio to each building, they would be required to provide less accessible units throughout the complex. Vivirito stated that all of the buildings containing accessible units are located in locations near a form of public transportation as well, i.e. an MBTA bus stop. He noted that the lack of creating access into the inaccessible buildings was also the reason that a variance was being sought for the lack of compliance with 521 CMR 10.1 at these buildings.

Vivirito testified that, as an example, 1439 Blue Hill Avenue was located directly at the sidewalk, and up to the entrance door of the building would be infeasible based on the fact that the beginning of the ramp would be locked between the existing building and the adjacent building. He went on to state that the installation of a lift to access the first floor of the building, from the entrance lobby, would encroach on the existing units, reducing the size of the units more than was feasible for the project. Vivirito stated that the change in level at this building was five (5) feet overall, from the sidewalk to the first floor, and that the lift would cost approximately \$40,000.00 and the ramp would cost \$20-25,000.00. Vivirito stated that the same issues for making the access into the first floor infeasible and an excessive cost without benefit to persons with disabilities were also present at the 1447 Blue Hill Avenue building. Maenpaa added that the installation of a lift within the buildings would also require that footings be poured to support the lift, at an additional cost and added taking of space.

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Upon reviewing the submitted documentation and testimony, the Board voted to *grant* the variance requested for 521 CMR 9.4, based on the fact that the Petitioners had proven that the overall number of units

provided within the complex at the end of the five phase project will meet or exceed 5% of the number of overall units within the complex. The Board also voted to *grant* the variance to 521 CMR 9.4.2 regarding the distribution of the accessible units provided within the complex. The motion was based on the fact that the Petitioners had proven that distributing the units per the requirements of 521 CMR 9.4.2 would be technologically infeasible. The Board also voted that the variance was granted on the condition that there are other units in other locations that are made available by Wayne Apartments, or that Wayne Apartments will refer tenants that they cannot accommodate to another developer or agency to help them find accessible housing. The Board also voted to *grant* the variance to 521 CMR 10.1 regarding the lack of access to the public and common use areas, based on the fact that the Petitioners had proven that full compliance would be both technologically infeasible and an excessive cost without substantial benefit to persons with disabilities.

Conclusion

After reviewing the matter, the Board voted as follows:

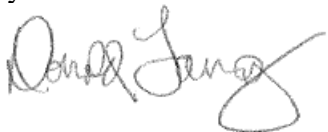
- *GRANT* the variance requested for 521 CMR 9.4, based on the fact that the Petitioners had proven that the overall number of units provided within the complex at the end of the five phase project will meet or exceed 5% of the number of overall units within the complex.
- *GRANT* the variance to 521 CMR 9.4.2 regarding the distribution of the accessible units provided within the complex. The motion was based on the fact that the Petitioners had proven that distributing the units per the requirements of 521 CMR 9.4.2 would be technologically infeasible. The Board also voted that the variance was granted on the condition that there are other units in other locations that are made available by Wayne Apartments, or that Wayne Apartments will refer tenants that they cannot accommodate to another developer or agency to help them find accessible housing. (Carries with Board Member Steinberg opposed).
- *GRANT* the variance to 521 CMR 10.1 regarding the lack of access to the public and common use areas, based on the fact that the Petitioners had proven that full compliance would be both technologically infeasible and an excessive cost without substantial benefit to persons with disabilities. (Carries with Board Member Steinberg opposed).

PLEASE NOTE: All documentation (written and visual) verifying that the conditions of a variance have been met, or the required work has been done, must be submitted to the AAB Office as soon the work is completed.

A true copy attest, dated: June 4, 2012

ARCHITECTURAL ACCESS BOARD

By:

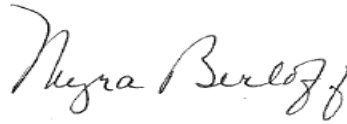


Donald Lang, Chairman

Diane McLeod, Vice Chair (not present)



Andrew Bedar, Member



Myra Berloff, Director of Massachusetts
Office on Disability



Raymond Glazier, Executive Office of Elder
Affairs Designee



Gerald LeBlanc, Member



Carol Steinberg, Member



D. Mark Trivett, Member



Walter White, Executive Office of Public
Safety Designee

A complete administrative record is on file at the office of the Architectural Access Board.

This constitutes a final order of the Architectural Access Board entered pursuant to G.L. c. 30A. Any aggrieved person may appeal this decision to the Superior Court of the Commonwealth of Massachusetts pursuant to Section 14 of G.L. c.30A. Any appeal must be filed in court no later than thirty (30) days of receipt of this decision.